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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/341,299	08/31/1999	VERONICA S. ROBINSON	XI/P6407US0	4968

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EXAMINER

LEVY, NEIL S

ART UNIT	PAPER NUMBER
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1616

DATE MAILED: 09/04/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09 341299

Applicant(s)

Robinson

Examiner

NBL Gay

Group Art Unit

166

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---The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address---

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

## Status

- ☒ Responsive to communication(s) filed on 7/22/02
- ☐ This action is FINAL.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 1 1; 453 O.G. 213.

## Disposition of Claims

- ☒ Claim(s) 1-30 is/are pending in the application.
- Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- ☒ Claim(s) 1-30 is/are rejected.
- ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- ☐ Claim(s) \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been received.
- ☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.
- ☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_.

## Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_
- ☐ Interview Summary, PTO-413
- ☐ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Other \_\_\_\_\_

Office Action Summary

Receipt is acknowledged of RCE, Amendment, declaration, each of 7/18, and declaration of 7/22/2002.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-30 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The invention as now claimed permits of repellents directly against the skin it is not at all clear how any of unspecified repellents, in unspecified amounts, could prevent unspecified parasites from any place other than the already strip covered area; thus also potentially toxic over extended periods of exposure. It is also unclear what "treat" is intended to mean as a claim limitation.

Are we concerned with a disease to be treated, infestation to be prevented—the issue of toxicity continues; P.I. cites permethrion as causing skin irritation; it is not excluded in the language of claim 1. The applicant favors pyrethrum. Shown by Casida's review to be a known allergenic material as of 1973. Plant extracts and plant materials are known to be irritants and allergenic, in the common arena. Applicant's identification of support for "non-toxic" is not at page 6-8, as far as examine can determine. As to solid form, note that body temperature may be less than environmental temperature (Arizona in summer).

Claims 1-30 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The language "non-toxic" is not evident in the specification.

Claims 1, 2, 5, 8, 16-18, 21 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Page--246335.

The rejection of record is maintained.

Claims 1, 2, 5, 8 and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by Bartlett et al 253702 or Gates 2555330 or Newman et al 2535089.

The rejection of record is maintained.

Claims 1, 15, 16 and 24 rejected under 35 U.S.C. 102(e) as being anticipated by Tucci.

The rejection of record is maintained.

Claims 1-5, 8, 9, 17-21, 24, 28 and 29 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Metzner et al 4862832.

The rejection of record is maintained.

Applicant's arguments filed 7/18/02 have been fully considered but they are not persuasive. Applicant's arguments have been considered, as to have the declarations. The rejections are maintained, as "non-toxic" language is not evident in the specification, and unspecified (claim 1) repellents are understood to be directly in

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contact with skin for unlimited periods of time—presumably days, but may be for weeks, or months, a no limit maximum or minimum, or ratio, of actives, or actives/carrier/substrate fabric, is claimed. However, the prior art is seen as meeting the non-toxic requirement.

Also, although weight is given to barriers intended use a garment attachment, other uses are not precluded and what is claimed is a composition. Also, “other parasites”, unspecified, permit of prior art having nothing to do with lice. The declarations are seen as showing efficacy, but are beyond the scope of the claimed invention—The Star Times reports a mix, for instance. Also, times of continuous exposure are not given but for “during an infestation of lice”—the label—the toxic/non-toxic issue. Claim 30 with added amount % or ratio of carrier to fabric, and % of wax to total carrier, and total % of actives to carrier (neem, eucalyptus, citronella, rosemary) would be seen to overcome prior art of record. The language in accord with the specification (page 9, b) and some form of “low order or reduced toxicity, as shown in the declarations of 7/22—HOWEVER; we see this as of new matter concern—these materials are not on the GRAS list—which would have eliminated the issue, even though not in the specification. Examiner, finds the claimed natural oils and pyrethruim with wax carrier, within the ranges claimed at claims 9-14 with the balance being the wax carrier, impregnated in an amount sufficient to provide the protection or “treatment” as shown in the Star Times, for example, or supported at page 8, last paragraph, if incorporated as in claim 30, to be outside of the prior art of record, and would warrant reconsideration.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Neil Levy whose telephone number is 308-2412. The examiner can normally be reached on Tuesday- Friday 7:00 am to 5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jose Dees can be reached on 308-4628. The fax phone numbers for the organization where this application or proceeding is assigned are 305-4556 for regular communications and 305-3592 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 308-1235.

Levy: mv  
August 28, 2002

A handwritten signature in black ink, appearing to read "Neil S. Levy", is written in a cursive style.

**NEIL S. LEVY**  
**PRIMARY EXAMINER**